

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5201 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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RAMESH @ JONI JESANG (KOLI) SITAPARA

Versus

DISTRICT MAGISTRATE

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Appearance:

Mr. N.M. Kapadia for MS DR KACHHAVAH for Petitioner  
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

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ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 28-4-96 passed by the District Magistrate, Jamnagar whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 29-4-96 and since then the

petitioner is under detention lodged at Special Jail, Bhuj.

2. The present Special Civil Application was filed in this court on 16-7-96 and on 19-7-96 Rule returnable on 12-8-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds of detention enclosed with the detention order show that as many as 5 criminal cases under the Bombay Prohibition Act were registered against the petitioner at Jamnagar City 'B' Division and in all these matters the trial was pending at the time when the detention order was passed. After taking notice of the allegations against the petitioner in these 5 criminal cases, the detaining authority has recorded that the petitioner was a head strong person. He has created an atmosphere of terror and, therefore, the witnesses were not prepared to come against him openly. The detaining authority has also taken into consideration the statements made by 3 witnesses on 11-4-96 against the petitioner's anti social and bootlegging activities and that the petitioner was engaged in the business of unauthorised liquor, threatening innocent people to extort money at the point of knife. The petitioner has been found to be a bootlegger and the detaining authority has expressed that the proceedings of externment will not be sufficient to prevent the petitioner from continuing his anti social activities and accordingly the detention order was passed.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is

allowed and the impugned detention order dated 28-4-96 passed by the District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.